

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

In re: Petition for Dispute Resolution Relating :
to Interconnection Wind Energy Development, LLC : Docket No. 4483
and ACP Land, LLC :

Wind Energy Development, LLC (WED)
and/or ACP Land, LLC (ACP)'s Response to
Commission Staff's Second Set of Data Requests
(October 20, 2014)

1. Provide the legal or equitable basis to support your position that the Petitioners should have final say over the content of a PLR application.

Response: As set out fully in our brief of August 29, 2014, National Grid is a regulated public utility. It is the duty of the Public Utility Commission and the Division of Public Utilities and Carriers to “supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy, communication, and transportation services and water supplies for the purpose of increasing and maintaining the efficiency of the companies, according desirable safeguards and convenience to their employees and to the public, and protecting them and the public against improper and unreasonable rates, tolls and charges by providing full, fair, and adequate administrative procedures and remedies. . .” R.I. Gen Laws at §39-1-1(c). The Commission never reviewed or approved this tax gross up policy to ensure it is not an “unreasonable rate, toll or charge” per R.I. Gen Laws §39-1-1(c). The Commission must review and approve the distribution company’s justification for the tax to comply with its statutory mandate and jurisdictional role over the tariff. In the absence of such review and approval, it is all the more important for the PUC to give the customers affected by the tax “adequate administrative procedures and remedies” per R.I. Gen Laws §39-1-1(c). Therefore, the Commission and Division must ensure that National Grid’s request for a private letter ruling properly frames the issue in a manner that ensures proper resolution of this matter. The Petitioners pay the tax, which is passed through to them by National Grid, and therefore have an advocacy interest in ensuring such a proper framing. If given the right to provide input on the PLR request(s), Petitioners can and will help ensure that the Commission and the Division are fulfilling their statutory obligation.

The general rule regarding appeals to the IRS is:

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f) refund any balance to such person.

26 U.S.C. §6402 (emphasis added). Additionally, case law indicates that even if National Grid files with the IRS, Petitioners are the ipso facto taxpayers entitled to seek relief. In Eighth Street Baptist Church, Inc. v. U.S., a church sought to obtain a refund of taxes withheld on behalf of its employees. 431 F.2d 1193, 1194 (10th Cir., 1970). The Court refused relief holding that the church was not the taxpayer but “merely the collection agent for its taxpayer employees.” Id. Similarly here, National Grid is merely a collection agent and Petitioners represent those with the actual taxpayer interest. This does not mean National Grid may not seek clarification on its liability for a tax paid by its customers, but it gives the taxpaying customers’ rights to control the form of the request(s) for private letter ruling(s). Petitioners’ commenced this petition on behalf of such customers and, therefore, should be allowed the right to represent the taxpaying-customers’ interests in this proceeding and with any such appeals to the IRS.

Beyond that, your request is right to point out that this is also an equitable issue. The equitable doctrine of fiduciary obligation applies to National Grid in this situation. Since this is a pass through tax paid by customers, National Grid has a fiduciary duty to ensure that the tax is owed. As a “collection agent,” National Grid may not pay such a tax blindly without ascertaining whether it is definitively owed under federal tax law. Yet, the Company has not fulfilled this equitable, fiduciary duty to its customers. Given the Company’s long history of assessing its customers a tax that is not owed, the customers clearly have a greater equitable interest in ensuring proper resolution of this issue moving forward.